

The Non-Profit Nature in Doubt in The Operation of Foundations

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Abstract: *This research aims to analyze the legal aspects of business activities carried out by foundations, especially in the education and health sectors, which should be based on non-profit principles. Foundations, as legal entities with separated wealth, have the authority to participate in business activities to support the achievement of their goals in the social, religious and humanitarian fields. However, foundations are required to adhere to the non-profit principle and not pursue personal gain. The writing method in this research uses a normative juridical approach with descriptive analysis of laws and practices related to foundations. The novelty of this research lies in the legal study of foundations that establish or operate commercial businesses, particularly in the education and health sectors, which often contradict the basic principles of foundations as non-profit entities. Although foundations can generate economic benefits from their business activities, this raises serious legal challenges regarding the foundation's legal status. This research concludes that foundations that are more focused on economic and commercial objectives may be declared in violation of their founding principles and potentially receive legal sanctions, including dissolution, if proven to conduct activities that prioritize commercial aspects over their social mission. As such, this research provides an important contribution in understanding the legal consequences for foundations that deviate from the social, religious, or humanitarian purposes for which they were established.*

Keywords: *Foundation; Nonprofit; Operation.*

1. INTRODUCTION

A foundation is a legal entity composed of separated assets intended to achieve specific goals in the fields of social, religious, and humanitarian efforts, which does not have members ¹. The law regulating foundations is Law No. 28 of 2004 concerning the Amendment to Law No. 16 of 2001 on Foundations. Law No. 28 of 2004 concerning the Amendment to Law No. 16 of 2001 on Foundations requires implementing regulations, which led to the issuance of Government Regulation of the Republic of Indonesia Number 63 of 2008 on the Implementation of the Law on Foundations.

¹ Nabilla Putri Islami, Paramita Prananingtyas, and Fifiana Wisnaeni, "Akibat Hukum Yayasan Yang Belum Menyesuaikan Dengan Peraturan Pemerintah Nomor 2 Tahun 2013," *Notarius* 13, no. 1 (2020): 127–37.

Law No. 28 of 2004 on Foundations explicitly states that a foundation is a legal entity established to achieve specific goals in the fields of social, religious, and humanitarian efforts. These three objectives of foundations can be categorized within the scope of social welfare, education, culture, health, and other areas that do not conflict with the law ². Soemitro states that a foundation is an organization that typically operates in the social sector and is not aimed at seeking profit; instead, its purpose is to engage in socially-oriented activities ³.

Currently, society establishes foundations for charitable activities, service, and dedication to the surrounding community. The activities carried out by these foundations are not only for the local environment but also extend to national and even international levels. The activities of foundations have evolved and now their programs can compete with those of government agencies and institutions ⁴. Foundations, in carrying out their activities, do not seek profit, whereas companies are explicitly aimed at generating profit. Various entities such as partnerships, limited partnerships (CV), limited liability companies, and cooperatives are considered companies. The description above indicates that a foundation is not classified as a company, as its activities do not involve running a business or pursuing profit ⁵.

As an institution with noble objectives, many foundations in practice and development in Indonesia have been misused and deviated from their original functions and purposes as non-profit social entities. Foundations that were initially established as non-profit or charitable organizations are often used as a means to launder the wealth of their founders and managers acquired through illegal means. Many foundations are intentionally established to take advantage of tax benefits. Educational or training institutions that choose to operate as foundations under the category of social activities are often exploited to pursue profit, which is then used to enrich their founders ⁶.

Moreover, foundations in Indonesia often engage in various business and commercial activities in all their aspects and manifestations. This is due to differing arguments; on one hand, it is argued that there are no prohibitions against foundations conducting business activities, allowing them to engage in business to enhance economic activity and create job opportunities. On the other hand, it is contended that although there are no regulations explicitly forbidding foundations from conducting business, the essence of a foundation's purpose is not profit-oriented but rather socially oriented ⁷. Based on the arguments above, a question arises: can a foundation that is non-profit oriented engage in activities that actually generate profit? What is the legal perspective regarding foundations that conduct profit-

² Fendi Supriono, "Implementasi Undang-Undang Yayasan Dalam Mencapai Maksud Dan Tujuan Yayasan" (Tadulako University, 2015).

³ Monica Puspa Dewi Suganda Putri and Kurniawan Tri Wibowo, *Hukum Yayasan: Teori, Praktik Pendirian, Operasional, Dan Pembubaran Yayasan-Jejak Pustaka* (Jejak Pustaka, n.d.).

⁴ Umar Haris Sanjaya, "Implementasi Yayasan Sebagai Badan Hukum Sosial Pada Perlindungan Hukum Para Janda (Studi Kasus Yayasan Persaudaraan Janda-Janda Indonesia Armalah Di Yogyakarta)," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 50, no. 2 (2016): 537–63.

⁵ Muhammad Rizqullah Dany Putranto, Nabila Aulia Rizki, and Naufandiary Bachtiar Ramzy, "Kebijakan Hukum Pendirian Yayasan Oleh Warga Negara Asing Di Indonesia," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 3 (2024): 205–14.

⁶ Ben Suykens et al., "Determinants of Non-Profit Commercialism. Resource Deficits, Institutional Pressures or Organizational Contingencies?," *Public Management Review* 23, no. 10 (2021): 1456–78.

⁷ Riana Susmayanti and M H SH, "Ketidak Berpihakan Regulasi Terhadap Penyelenggaraan Pendidikan Oleh Yayasan Pendidikan Tinggi Swasta," *Jurnal Konstitusi* 1 (2008).

generating activities? The purpose of this research is to examine the position of socially oriented foundations that, in fact, generate profit in their activities, as well as to analyze the legal perspective concerning foundations that operate in profit-generating activities.

Although foundations are legally recognized as non-profit entities established with social, religious, and humanitarian purposes, there is a shift in field practice that draws attention. In practice, many foundations are involved in business activities and obtain significant profits. While the law governing foundations, namely Law No. 28 of 2004 on the Amendment to Law No. 16 of 2001 on Foundations, provides a foundation for foundations to pursue social goals without focusing on profit, there is a research gap that needs to be identified and analyzed regarding the legal limitations and legal consequences of foundations operating as commercial entities.

The main research issue that needs to be addressed is how far a foundation can operate within the scope of profit-making activities without violating the non-profit principle on which it was established. In Indonesia, foundation regulations do not strictly prohibit foundations from conducting business activities, but also do not provide clear guidance regarding the limitations of the types of businesses that can be conducted. This poses a dilemma for many foundations that, although engaged in social activities, also have a dominant business aspect in their operations. Thus, the gaps of this research include the absence of comprehensive guidelines and regulations regarding the extent to which foundations can engage in commercial activities without contradicting their non-profit status.

In addition, there is a contradiction between the foundation's function as a social entity and the fact that some foundations, particularly those in the education and health sectors, exhibit characteristics of business entities. This is a problem because these foundations operate by charging fees or selling services that are profit oriented. Based on previous findings, such foundations tend to take advantage of vagueness in regulations to obtain profits that are not explicitly regulated by law.

Furthermore, this problem stems from diverse interpretations on whether foundations, while not prohibited from doing business, should conduct profit-making activities within the framework of the non-profit principle. In this regard, it should be understood that foundations that establish or invest in business entities may experience a clash with the fundamental principles that distinguish foundations from companies. This action raises questions around the legal legitimacy of foundations that tend to be more profit-oriented than social activities. Another research gap relates to the utilization of foundations as a means of abuse of function by founders or managers who may have ulterior purposes, such as money laundering or tax evasion. There are indications that some foundations are used to channel funds that are not transparent or to avoid tax obligations, which may lead to violations of the law. Thus, this research also aims to explore the legal aspects governing foundations in the context of compliance with tax regulations and anti-corruption laws.

This research is important to fill the research gap relating to the legal validity of profit-making foundation activities, and to determine whether foundations operating as commercial entities violate the basic principles of the foundation itself. By answering these questions, this research aims to make a significant contribution to the foundation law literature in Indonesia and clarify the legal implications for foundations engaged in commercial activities. As such, this research will focus on analyzing the legal position of foundations that engage in profit-making activities,

as well as reviewing the legal implications if it is found that the foundation violates the non-profit principle. The results of this research are expected to provide a clearer picture of the legal limitations for foundations in the context of business activities in Indonesia and offer guidance for the development of more accurate and detailed regulations.

2. RESEARCH METHODS

This research employs a normative legal research method. The approach used in this study is the statute approach. With this approach, the research aims to explore and interpret the relevant laws, as well as assess whether there is harmony between the practices carried out by foundations in Indonesia and the applicable legal provisions. This research is explanatory, highlighting the causal relationships between research variables and testing previously formulated hypotheses⁸. The data source for this research consists of secondary data. The secondary materials include all publications related to law that are not official documents. Data collection was conducted through library research. Data analysis was carried out using a qualitative approach.

In the context of positivist legal theory, this method is particularly relevant as it focuses on written regulations which are considered the primary source for understanding and explaining the applicable law. Legal positivism emphasizes that laws are rules made by the state, so this research will assess the foundation's compliance with established positive legal norms, as well as evaluate how the law is applied in the context of the foundation's operations engaged in commercial activities.

3. RESULT AND DISCUSSION

3.1. Foundation as a Legal Entity with Social Objectives

From the outset, a foundation is established not for commercial purposes or to seek profit but for a more noble aim: to assist or improve the welfare of others. Foundations focus on charitable activities and social services designed to provide support to those in need, alleviate poverty, enhance education, provide healthcare services, and engage in various other initiatives aimed at creating positive change in society. Through these efforts and commitments, foundations play a crucial role as an important pillar in building more prosperous and sustainable communities⁹. C.S.T. Kansil and Christine Kansil state that a foundation, or *stichting* (in Dutch), is a legal entity that engages in activities in the social sector¹⁰.

Before the enactment of Law No. 16 of 2001, the existence of foundations was often utilized for social and religious activities whose purposes were not necessarily purely social or religious. In the past, foundations were established solely based on societal customs and

⁸ Febri Endra Budi Setyawan, *Pengantar Metodologi Penelitian: (Statistika Praktis)* (Zifatama Jawara, 2017).

⁹ Gatot Supramono, *Hukum Yayasan Di Indonesia* (Rineka Cipta, 2008).

¹⁰ Tania Tasmaya Rarasati, Hariyanto Susilo, and Iwan Permadi, "Legal Protection of Foundations of Land Ownership Which Is Named to the Management," *International Journal of Multicultural and Multireligious Understanding* 8, no. 3 (2021): 297–303.

jurisprudence¹¹. The purposes of their establishment often included enriching oneself, avoiding wealth taxes, gaining power over institutions, navigating difficult bureaucracy, and serving as a means to obtain benefits from the state¹².

In Western legal concepts, a foundation is an entity intended to operate in the fields of non-profit social and humanitarian activities¹³. Its status as a legal entity grants the foundation attributes similar to those associated with natural persons (*natuurlijke persoon*), including the ability to own assets and act legally on its own behalf through its management¹⁴.

Foundations in Indonesia function as social institutions that play a role in societal and humanitarian fields. Foundations are managed by individuals or groups with a shared vision in their social care mission, becoming recognized legal entities that are subject to European law as regulated by the Civil Code, and some are also subject to other laws, such as those governing *waqf* in Islamic law, which falls under specific regulations established by Sharia principles for charitable and humanitarian purposes as dictated by Islamic teachings.

A foundation is a legal entity that is distinct from associations or limited liability companies, as a foundation does not have members or shareholders¹⁵. A foundation itself possesses characteristics that differ from various forms of business entities, as it is an organization that engages in various activities that are social in nature and non-profit.

The hallmark of a foundation is the separation of assets from its founders, ensuring that the foundation's assets and funds are legally distinct from the personal wealth of the founders. This guarantees that all resources of the foundation are used exclusively to achieve social objectives such as education, health, welfare, and other charitable activities. Foundations do not aim to generate financial profits for their founders, but rather to provide maximum benefits to the broader community. Through this structure, a foundation can operate with a pure focus on its social mission, free from personal conflicts of interest from its founders¹⁶.

Article 1, paragraph 1 of the Foundation Law emphasizes that a foundation is a legal entity comprised of separated assets intended to achieve specific goals in the fields of social, religious, and humanitarian activities, and it does not have members. A foundation operates in the social sector, including humanitarian efforts. Foundations are established through a notarial deed, which outlines the founding capital of the foundation and introduces its

¹¹ Jeanet Trifena Lewi and Gunawan Djajaputra, "Sanksi Hukum Bagi Pengurus Yang Menghalangi Proses Pemberesan Kekayaan Yayasan Yang Dibubarkan Berdasarkan Putusan Pengadilan (Studi Kasus Pembubaran Yayasan Bhakti Sosial Surakarta Berdasarkan Putusan Mahkamah Agung Nomor 625 K/Pdt/2012)," *Jurnal Hukum Adigama* 1, no. 1 (2018): 1112–38.

¹² Chatamarrasjid, *Tujuan Sosial Yayasan Dan Kegiatan Usaha Bertujuan Laba* (Citra Aditya Bakti, 2000).

¹³ J Podgórska-Rykala and M Кепа, "A Foundation as a Legal Institution under Polish Law," *Вестник Пермского Университета. Юридические Науки*, no. 54 (2021): 790–801.

¹⁴ Munir Fuady, "Teori-Teori Besar (Grand Theory) Dalam Hukum," *Jakarta: Kencana*, 2013.

¹⁵ Susan Watson, "How the Company Became an Entity: A New Understanding of Corporate Law," *Journal of Business Law* 120 (2015).

¹⁶ Suyud Margono, *Badan Hukum Yayasan: Dinamika Praktek, Efektivitas & Regulasi Di Indonesia* (Pustaka Reka Cipta, 2015).

management¹⁷. The substance of this article highlights the characteristics of a foundation, namely: a) a foundation as a legal entity; b) possessing separate assets derived from its founders to achieve the foundation's objectives; c) the foundation's objectives in the fields of social, religious, and humanitarian activities; d) not having members¹⁸.

Law No. 16 of 2001 in conjunction with Law No. 28 of 2004 explicitly regulates foundations as legal entities. The phrase "legal entity" seems to be emphasized in the above definition by the lawmakers, likely due to the historical context where its status had been unclear due to the absence of written laws applicable in Indonesia¹⁹.

Like limited liability companies (LLCs) and cooperatives, foundations are legal entities that fall into the category of private law entities. This distinction aims to differentiate them from public law entities. The main difference between public and private law entities lies in the establishment process, which is regulated by Article 1653 of the Civil Code. This establishment process relates to the regulations governing how a legal entity is formed.

Even if established by public institutions or public officials, a foundation still retains its status as a private legal entity. The foundation formed does not have public authority; rather, it only has authority within the realm of civil law. This means that the foundation's status remains as a private legal entity, even if the initial assets or wealth used in its establishment originate from or are state assets²⁰.

3.2. Foundations for Social and Humanitarian Purposes

The exploration of the functions and social purposes that are non-profit in nature held by foundations in Indonesia is essential because, first, referring to the history of Ancient Egypt and several legal regulations from Western or European traditions, it can be understood that a foundation is an entity organized primarily to operate in activities that are not aimed at generating profit, but rather for social, humanitarian, and religious purposes²¹. In fact, from the very beginning, foundations have been prohibited from engaging in any legal activities that aim to gain personal profits for their founders or managers²². This means that the founders and managers of the foundation who have initiated and managed the foundation from the start have had a pure intent and purpose to provide assistance to those in need, with a commitment to implementing various programs and initiatives that have a positive impact on their social and economic welfare.

¹⁷ Vira Moerdany, Prija Djatmika, and Hanif Nur Widhiyanti, "Juridical Analysis of Foundation Beneficial Owner Based on Presidential Regulations Number 13 of 2018," *International Journal Of Humanities Education and Social Sciences* 4, no. 1 (2024).

¹⁸ Habib Adjie and Muhammad Hafidh, *Yayasan: Memahami Pendirian-Perubahan-Pembubaran Yayasan Sebelum Dan Sesudah Berlakunya Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan* (PT. Citra Aditya Bakti, 2016).

¹⁹ Moh Zainol Arief, "Orientasi Pembaharuan Pemidanaan Untuk Pemenuhan Hak Korban Dalam Sistem Penegak Hukum," *Jurnal Jendela Hukum* 9, no. 2 (2022): 191–204.

²⁰ Andreas Kevin Patolla, Ilut Saputri, and Opi Winarti, "Analisis Yuridis Dinamika Dan Dampak Likuidasi Yayasan," *Nomos: Jurnal Penelitian Ilmu Hukum* 4, no. 2 (2024): 70–77.

²¹ Penerbit Gita Lentera, "BENTUK-BENTUK BADAN USAHA Oleh Junaidi, SH, MH, CLA, CBPA," *Hukum Perusahaan*, 2023, 60.

²² Supramono, *Hukum Yayasan Di Indonesia*.

In general, a foundation is established by several individuals or can also be established by just one person, whether they are Indonesian citizens or foreign nationals, by separating an asset from one or more of its founders, with an ideal or social purpose that does not seek profit. It has a management team that is required to handle and manage everything related to the sustainability of the foundation ²³.

A specific purpose is one of the material requirements that must be met for the establishment of a foundation. This purpose must be ideal and must not contradict the law, public order, morality, or interests. The purpose must not be directed towards achieving profit or other material interests for its founders. Therefore, the establishment of a foundation with the essential purpose of operating as a business entity is not allowed ²⁴.

Trading involves not only the hope of making a profit, but also the possibility and risk of suffering losses, while incurring losses is not part of the rights of a foundation. So, initially, this foundation was established with an ideal or social purpose and not for profit. The founder is entirely free to organize it according to their wishes. What must be maintained is that the foundation must not turn into an association ²⁵.

According to Soemitro, a foundation is more appropriately referred to as a Non-Profit Organization (NPO) as a translation of 'non-profit organization.' He believes the term NPO is more accurate than 'badan nirlaba,' because the word 'nir,' which comes from Javanese, means 'without,' so 'nirlaba' means 'without profit.' However, a foundation may sometimes generate profit or gains, but this is not its primary objective." ²⁶. It is further explained that the term Non-Profit Organization (NPO) is broader than the term 'foundation.' A foundation is an NPO, but an NPO is not always a foundation. Therefore, a foundation is one type of non-profit organization.

The presence of foundations is generally aimed as a response to the concept of civil society, which emphasizes justice, respect for human rights, and ultimately impacts the improvement of public welfare. This encourages the establishment of organizations with social purposes to drive change towards achieving public welfare ²⁷.

Secondly, although foundations are established with noble intentions, they are often misused in practice in Indonesia. Foundations that were initially non-profit and oriented towards social and humanitarian goals are sometimes exploited to launder the wealth of founders and administrators, which was obtained unlawfully. Many foundations are established with the aim of taking advantage of tax exemptions, especially in the fields of education or training that

²³ Tri Angkarini, Wiwik Yully Widyawati, and Suhendra Suhendra, "IMPLEMENTASI MANAJEMEN MUTU TERPADU DALAM PENGELOLAAN KELAS IQRA' PADA YAYASAN MASJID BAITUL HIKMAH CIMANGGIS," *Research and Development Journal of Education* 10, no. 2 (2024): 953–66.

²⁴ Juvino Pinori, "Yayasan Sebagai Badan Hukum Yang Bergerak Dalam Bidang Sosial Dan Keagamaan Menurut Undang-Undang Nomor 28 Tahun 2004," *LEX ET SOCIETATIS* 6, no. 10 (2018).

²⁵ Pinori.

²⁶ Decroly Johnlight Raintama, "TANGUNG JAWAB YAYASAN SEBAGAI BADAN HUKUM DALAM PENGELOLAAN HARTA KEKAYAAN DAN KEPENGURUSAN," *LEX ET SOCIETATIS* 7, no. 4 (2019).

²⁷ Dewi Sukma Kristianti, "-MENELISIK YAYASAN DI INDONESIA: SEBAGAI LEMBAGA YANG MEMILIKI FUNGSI DAN TUJUAN SOSIAL SEMATA?-", *Jurnal Paradigma Hukum Pembangunan* 6, no. 1 (2021): 1–32.

should be social in nature, but are used for personal gain, ultimately enriching their founders."²⁸

Moreover, many foundations in Indonesia today are engaged in business and commercial activities in various forms and aspects. This happens due to differing arguments: one side believes that there is no prohibition against foundations engaging in business activities, so foundations are allowed to conduct business in order to boost economic activity and create jobs. The other side argues that, although there is no regulation prohibiting foundations from conducting business activities, such activities are not, in essence, the purpose of a foundation."²⁹ Unlike limited liability companies, which have the flexibility to explore various business fields legally without strict limitations, foundations, on the other hand, are only permitted to have purposes or conduct activities focused on three specific areas: social, religious, and humanitarian.

In English, the term used to refer to a 'yayasan' is 'foundation,' while in Dutch, it is known as 'stichting.' A foundation is considered a legal entity, so responsibility for actions taken for and on behalf of the foundation can only be attributed to the foundation itself and is limited to the assets owned by the foundation. In practice, it has been proven that what is commonly referred to as a foundation is an entity not only involved in non-commercial activities but also indirectly engaged in commercial activities³⁰.

Fundamentally, the philosophical purpose of establishing a foundation is understood as a legal entity that is non-commercial or not aimed at seeking profit (non-profit). In reality, foundations are often exploited not for social and humanitarian purposes, but to enrich the founders or administrators, evade taxes, control an educational institution continuously, bypass bureaucracy, obtain various facilities from the state or authorities, and other objectives³¹.

In line with the non-profit principle, the rights of a foundation cannot be equated with those of a company. A foundation, in carrying out its activities, does not pursue profit, unlike companies, which clearly have the objective of making a profit. Various entities such as partnerships, limited partnerships, limited liability companies, and cooperatives can be categorized as businesses. This narrative aims to emphasize that a foundation, by its status as a non-business entity, does not engage in business activities and does not aim to seek profit³².

The Foundation Law allows foundations to establish business entities, with the limitation that the foundation's asset contributions must not exceed 25% of the total assets of the foundation. This aims to ensure that foundations wishing to establish business entities make

²⁸ Supramono, *Hukum Yayasan Di Indonesia*.

²⁹ Abriana Kusuma Dewi, "Implikasi Yuridis Badan Hukum Yayasan (Suatu Tinjauan Normatif)," *Novum Argumentum* 1, no. 1 (2022): 23–31.

³⁰ Fuady, "Teori-Teori Besar (Grand Theory) Dalam Hukum."

³¹ Ahmad Abdan Syukron, Syafruddin Syafruddin, and Muhammad Ilyas, "Pola Pendampingan Yayasan Galang Anak Semesta (GAGAS) Dalam Pencegahan Eksploitasi Seksual Komersial Anak Di Desa Senteluk Kecamatan Batulayar Lombok Barat," *SOCED SASAMBO: Journal of Social Education Sasambo* 1, no. 1 (2023): 1–9.

³² Supriono, "Implementasi Undang-Undang Yayasan Dalam Mencapai Maksud Dan Tujuan Yayasan."

careful considerations and prevent deviations from their original purposes and objectives. The main concern is to ensure that the activities conducted by the foundation remain aligned with its aims and objectives, even though seeking profit to achieve those goals is permitted.

Article 1, point 1 of the Foundation Law explicitly states that a foundation is a legal entity intended to achieve specific purposes solely in the fields of social, religious, and humanitarian affairs. These three objectives of the foundation can be classified into areas of activity such as social welfare, education, culture, health, and other areas that do not conflict with the law.

To achieve its objectives, a foundation may engage in business activities. The business activities referred to can be conducted in accordance with the provisions set forth in Article 3, paragraph (1) of the Foundation Law, which states that a foundation may conduct business activities to support the attainment of its aims by establishing business entities and/or participating in business entities. Furthermore, the explanation of Article 3, paragraph (1) in the Foundation Law stipulates that this provision is intended to clarify that a foundation is not permitted to serve as a business entity and cannot engage in business activities directly but must do so through the business entities it establishes or through other business entities in which the foundation contributes its assets.

In reality, it is evident that many foundations today are no longer purely oriented as non-profit organizations; instead, they are beginning to shift towards commercial objectives. Foundations that should focus on social, religious, and humanitarian fields are now getting involved in profit-generating business activities. However, this shift distances these foundations from their primary purpose as entities aimed at helping the community without prioritizing financial gain. Many foundations exploit their legal status to obtain profits that ultimately do not align with the foundational principles of being a non-profit organization. This phenomenon reflects a paradigm shift where commercial aspects are prioritized over social contributions, which should be the main focus. In fact, there are some entities labeled as foundations, while in reality, they are cooperatives or companies³³.

At least there are four types of foundations. First, the activities of this type of foundation solely involve collecting funds from donors, which are then donated to social activity organizations, such as providing scholarships, contributing to orphanages, hospitals, and so on. The foundation does not interfere at all in the management of social services such as educational materials, shelters, hospitals, and other relevant social institutions. This type is considered a classic, traditional foundation³⁴.

The second type is a foundation that directly operates the relevant social institutions; it establishes educational institutions, universities, and hospitals, while simultaneously seeking to generate surplus income from these activities, which is then reinvested to intensify its social activities³⁵. The third type involves a foundation establishing a limited liability company that operates businesses such as factories or profit-seeking enterprises, with the dividends

³³ Anwar Borahima, *Kedudukan Yayasan Di Indonesia: Eksistensi, Tujuan, Dan Tanggung Jawab Yayasan Ed. 1* (Kencana, 2016).

³⁴ S H Rudhi Prasetya, *Yayasan Dalam Teori Dan Praktik* (Sinar Grafika, 2024).

³⁵ Rudhi Prasetya.

obtained being donated to social activities organized by other parties or conducted by the foundation itself ³⁶.

The fourth type of foundation is one that cannot be justified because it is a disguised foundation that actually operates as a company or business entity to seek personal profit for its founders and managers. This type is often established and registered as a foundation, even though in practice its aim is to increase personal wealth. In the Netherlands, before the issuance of regulations such as the *Wet op Stichting* on May 13, 1956, this type of foundation proliferated and was later adopted into law in Indonesia ³⁷.

Although there are clear restrictions regarding a foundation's involvement in the business world, the potential for deviations or violations of these restrictions still exists. Legal loopholes and a lack of strict oversight often create opportunities for certain individuals to exploit foundations as tools for personal or commercial gain. Moreover, a flexible interpretation of existing rules can provide space for actors to violate regulations in ways that appear legitimate on the surface but actually deviate from the foundation's fundamental objectives. This situation is further exacerbated if the mechanisms for oversight and law enforcement are not functioning effectively, increasing the potential for abuse of power by related parties. This is due to the absence of sanctions imposed on foundations that violate these restrictions.

The Foundation Law in Indonesia still has imperfections evident from the existing provisions. Although it has established a framework for each legal entity according to its founding purposes, there are still gaps that need to be addressed. Profit-oriented legal entities can use limited liability companies, while legal entities aimed at the welfare of their members must take the form of cooperatives. Foundations are still required to have social, religious, and humanitarian objectives.

It is important to emphasize that foundations must have social and religious objectives. In practice, the legal form of foundations is widely used in Indonesia to achieve social and humanitarian purposes, such as funeral foundations, orphanage foundations for orphans, elderly care foundations, foundations engaged in cultural activities, pension fund foundations, and so on. The government can also establish foundations, such as reading foundations, food aid foundations, employee welfare foundations, and others ³⁸.

Foundations are established with idealistic objectives without seeking profit, particularly in the field of education to enlighten the nation or improve the quality of education. However, many educational foundations charge high tuition fees while taking advantage of their status as tax-exempt entities or receiving tax relief. This has become an important factor in the rapid development of educational foundations, as well as in hospital foundations and pension funds.

³⁶ Rudhi Prasetya.

³⁷ Borahima, *Kedudukan Yayasan Di Indonesia: Eksistensi, Tujuan, Dan Tanggung Jawab Yayasan Ed. 1*.

³⁸ Citra Nurimbono, "Perancangan Persuasi Komersial Yayasan Elfoundation Melalui Media Motion Graphic" (Universitas Komputer Indonesia, 2023).

3.3. The Questioned Non-Profit Status in Foundation Operations

Several foundations in Indonesia run various programs, such as providing assistance to orphans, enhancing welfare for individuals with disabilities, offering scholarships for children from underprivileged families, supporting grieving families, providing health services for patients with specific illnesses, and other activities³⁹. The assistance provided by the foundation greatly depends on its financial condition. The funds used come from the foundation itself, which has assets separate from the personal property of its administrators. The foundation's funding sources include donations from third parties as well as from businesses operated by the foundation⁴⁰.

The subsequent development shows that foundations cannot survive if they only rely on donations from donors, leading them to become involved in business activities. Some foundations were even established from the outset for commercial purposes, such as in the fields of education, health, and media. The activities of these foundations encompass various sectors that should be business activities with profit objectives, such as limited liability companies, limited partnerships, and other commercial enterprises.

In the field of education, the services provided by foundations are not only utilized by economically disadvantaged groups but also by more affluent segments. This situation has the potential to cause foundations to lose their social function, which is at the core of their existence. When foundations begin to focus on commercial activities or other interests that deviate from their primary objectives in social, religious, or humanitarian fields, they may lose their orientation in providing benefits to the community. As a result, the role of foundations as institutions that should contribute to social welfare can be disrupted, and their main function may become marginalized by activities that are more profit-oriented. In practice, social activities in the education sector often represent only a small portion compared to commercial activities.

According to the provisions of Article 3 paragraph (1) of the Foundation Law, foundations may conduct business activities to support the achievement of their aims and objectives by establishing business entities and/or participating in a business entity; however, foundations are not allowed to distribute the profits from these business activities to the Supervisory Board, Supervisors, and Administrators. This provision actually sets a clear limitation on foundations that own business entities. The reality on the ground is that the capital for these businesses comes from the founders, supervisors, and administrators of the foundation. This fact cannot be denied in the existing reality, as it is indeed the case. This means that the provisions of Article 3 paragraph (1) are only stated in the text of the law, but in practice, these provisions are not implemented as they should be.

Article 3 paragraph (1) of the Foundation Law also has a weakness, namely the question of who supervises the enforcement of this regulation in Indonesia. This question is worth raising because the wording of the legislation is appealing and attractive within the existing articles, but it is lacking in implementation.

³⁹ Supramono, *Hukum Yayasan Di Indonesia*.

⁴⁰ Supramono.

Article 7 of Law No. 16 of 2001 states that foundations may establish business entities whose activities align with the aims and objectives of the foundation. Foundations may also invest in various prospective business forms, provided that the total investment does not exceed 25% of the overall value of the foundation's assets. Members of the Supervisory Board, Administrators, and Supervisors of the foundation are prohibited from concurrently serving as members of the Board of Directors, Management, or Board of Commissioners of the business entity.

Article 7 of Law No. 16 of 2001 provides a clear legal basis for foundations to invest in and establish business entities. This indicates recognition of the role of foundations as entities that not only operate in the social sector but can also participate in economic activities that align with their objectives. Consequently, foundations have the opportunity to enhance their financial sustainability through commercial ventures, which can increase their capacity to implement social programs that benefit the community.

However, the maximum investment limit of 25% of the total value of the foundation's assets is crucial to ensure that the foundation remains focused on its social mission and does not lose its direction. This restriction also serves to prevent the foundation from incurring excessive financial risks, which could negatively impact the sustainability and operations of the foundation itself. With this limitation in place, foundations can avoid involvement in practices that may be detrimental, both financially and reputationally. This is essential to maintain the integrity of the foundation and to ensure that the initial objectives of its establishment are upheld. Foundations that operate within the established limits will be better able to concentrate on the social, religious, or humanitarian missions that form the basis of their establishment, without being distracted by pressures to generate profits that are inconsistent with the foundation's core principles. Thus, this restriction becomes one way to ensure that foundations continue to function as institutions that benefit the community and do not lose sight of the original goals set by their founders.

The prohibition for members of the Supervisory Board, Management, and Supervisors of the foundation to concurrently serve as members of the Board of Directors, Management, or Board of Commissioners of the business entity is a prudent measure. This aims to avoid potential conflicts of interest and ensures that the decisions made by the foundation remain oriented towards social interests rather than merely for financial gain. With this provision in place, the transparency and accountability of the foundation can be maintained, thereby increasing public trust in the foundation as an institution committed to fulfilling its social responsibilities.

The law regarding foundations aims to limit the business activities carried out by foundations. Foundations are only allowed to engage in philanthropic activities and are not permitted to conduct business activities, except by establishing new enterprises or investing in existing ones. However, the boundary between commercial business activities and social services provided by foundations or non-profit organizations often overlaps, making it a challenge to clearly separate them. In many cases, the business activities carried out by foundations aim to support their social mission, but sometimes the line between seeking profit and providing social benefits becomes blurred. This can lead to debates about which priorities should be emphasized, as well as potential conflicts between business objectives and commitments to social responsibility.

Despite various viewpoints supporting and opposing the involvement of foundations in the business world, the reality is that an increasing number of foundations are actively engaging in various forms of business and commercial activities, both directly and indirectly, through various manifestations such as investments, social enterprise development, or even strategic partnerships with commercial entities. This phenomenon reflects a new dynamic in the philanthropy ecosystem, where foundations are not limited to social and non-profit activities but are also beginning to leverage business opportunities as part of their efforts to enhance financial sustainability and expand their social impact. If the foundation clearly diverts or changes its focus to business activities, then the original form of the foundation should be terminated. With the transition of the foundation into commercial business activities, it is evident that its aims and objectives have shifted towards seeking profit ⁴¹.

The legal form of a foundation is more appropriate when the founders have a full and selfless commitment to social, religious, and humanitarian goals. On the other hand, a Limited Liability Company (LLC) is an association of capital that focuses on commercial objectives. An LLC is established to conduct business activities with a fully divided share capital. Thus, the founders become shareholders (owners) of the LLC and can pursue their personal interests through the shares they hold, such as receiving dividends, profits from the sale of shares (capital gains), and so on. Therefore, it is clear that the motivations of the founders significantly influence the choice of legal entity for hospitals and educational institutions ⁴².

Currently, there are various misconceptions regarding the management of foundations that have persisted, such as: a) Foundations are seen as non-profit organizations that should not seek profits, leading many foundations to become 'bloodless' because they rely solely on the same donors' contributions each year without seeking more creative funding sources; b) Because foundations focus on social and humanitarian missions, their management tends to be less professional compared to profit-oriented business management, as founders and managers are often volunteers with many other commitments; c) As non-profit organizations, foundations rarely engage in marketing because it is considered commercial, which results in difficulties in development and obtaining funding sources due to being less known to the public; d) As non-profit organizations, the management of foundations differs from that of companies, and many foundations do not thrive due to unprofessional management, inefficiency, and weak accountability and oversight ⁴³.

Considering the nature of foundations as entities aimed at social, humanitarian, or religious activities, without a profit orientation, it is very appropriate that the Foundation Law emphasizes that a foundation can be established by a single person, provided there is a separation of assets between the founder and the foundation. This separation is important because it ensures that the assets donated or bequeathed by the founder no longer become part of their personal wealth but are entirely allocated for the interests and purposes of the foundation. This provision provides legal certainty regarding the sustainability of the foundation and ensures that the management of the foundation's wealth is carried out with full responsibility and transparency, in accordance with its social mission. Article 9 paragraph

⁴¹ Rudhi Prasetya, *Yayasan Dalam Teori Dan Praktik*.

⁴² Borahima, *Kedudukan Yayasan Di Indonesia: Eksistensi, Tujuan, Dan Tanggung Jawab Yayasan Ed.*

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⁴³ Borahima.

(1) of the Foundation Law states that a foundation can be established by one or more individuals by separating part of the founder's wealth as initial assets.

Currently, it should be noted that the establishment of a Foundation is a unilateral legal action. If the Foundation is established by two or more individuals as Founders, the nature of that legal action is essentially different from the establishment of a Corporation. In the establishment of a Corporation, the legal actions of the founders also involve participation in the corporation as a capital partnership. On the other hand, the legal action of establishing a Foundation results in the existence of the Foundation itself⁴⁴.

A foundation that focuses on profit from its activities contradicts the aims and objectives stated in Article 1 paragraph (1) of Law No. 16 of 2001. In fact, foundations are intended to achieve specific goals in the fields of social, religious, and humanitarian activities, whereas profit-seeking foundations have a commercial nature. According to Article 62 of the Foundation Law, one of the conditions for the dissolution of a foundation is the achievement or non-achievement of the goals set forth in the Articles of Association. A foundation or its organ that conducts business activities within the foundation has fulfilled that requirement.

The dissolution of a foundation may occur if the foundation is commercial in nature, as this indicates that the philosophical goals underlying the establishment of the foundation have not been achieved in accordance with its initial aims and objectives. A foundation that is profit-oriented clearly deviates from its primary purpose, which should be in the realm of social, religious, and humanitarian efforts. When a foundation shifts its focus to pursue profit, it signifies that the foundation no longer functions as an entity that provides social benefits to the community but has transformed into a business entity that prioritizes financial aspects. Therefore, if the foundation's objectives are not met and it continues to operate in a commercial manner, the foundation may be dissolved or liquidated to prevent the misuse of its status as an institution that is supposed to be committed to public interests.

The provisions also apply to educational foundations that should play a role in providing social benefits in the form of access to education for the community. If an educational foundation is found to engage in business activities that are contrary to the law or deviate from its social objectives, the foundation may be subject to liquidation or dissolution. This process is carried out in accordance with the provisions set forth in the applicable legislation, as a form of law enforcement and protection of the social principles underlying the establishment of educational foundations. This is important to ensure that the foundation remains focused on its primary objective in the field of education and does not transform into a commercial entity that violates regulations.

Article 63 of the Foundation Law regulates that a foundation that is dissolved because the goals set forth in its Articles of Association have been achieved or not achieved, the Board of Trustees shall appoint a liquidator to settle the foundation's assets; in the absence of an appointed liquidator, the management shall act as the liquidator.

Members of the foundation's organ involved in commercial activities for personal gain also violate the provisions of Law No. 16 of 2001, specifically Article 70 concerning Criminal Provisions. This article states that any member of the foundation's organ who receives or

⁴⁴ Dewi, "Implikasi Yuridis Badan Hukum Yayasan (Suatu Tinjauan Normatif)."

takes the foundation's assets, whether in the form of money, goods, or other assets, directly or indirectly, including in the form of salaries, wages, honoraria, or other forms that can be valued in money, may be subject to imprisonment for a maximum of 5 (five) years. In addition to imprisonment, members of the foundation's organ may also face additional penalties in the form of an obligation to return the money, goods, or assets of the foundation that have been transferred or distributed.

The crimes regulated can be categorized as offenses within the scope of the foundation, namely the unlawful transfer or distribution of the foundation's assets, carried out by members of the Board of Trustees, Management, or Supervisory Board of the foundation. If these actions are performed by employees of the foundation, they cannot be prosecuted under this crime but may be subject to sanctions based on Article 372 of the Penal Code regarding the crime of embezzlement.

4. CONCLUSION

Although there is a maximum investment limitation of 25% of the total value of the foundation's assets, in reality, there have never been any reports providing clarity regarding the implementation of this rule. Furthermore, to date, not a single non-profit foundation has been dissolved as stipulated in Article 63 of the Foundation Law. This means that the provisions limiting the movement of foundations to adhere to their non-profit principles are difficult to evade, as these issues are visibly present in many cases. Based on this condition, to provide a solution for foundations that have business entities, the designation of simply 'foundation' should become 'limited foundation,' akin to a limited liability company (PT). The phrase 'limited foundation' can be interpreted as a limitation on assets specifically set aside to achieve goals in social, religious, and humanitarian fields. A 'limited foundation' whose activities aim to achieve social, religious, humanitarian, and commercial elements, such as in education, needs to change its legal form to a Limited Liability Company (PT). One of the weaknesses of this research is the absence of empirical data or reports that concretely discuss the implementation of the maximum investment limit rule of 25% of the total assets of the foundation, as well as the lack of documentation regarding the dissolution of non-profit foundations according to Article 63 of the Foundation Law. This indicates that there is a gap between regulation and practice, which shows that this research has not been able to ascertain the extent to which the rules are effectively implemented in the field. For further research, it is recommended that an empirical study involving field data collection and interviews with stakeholders, such as foundations, lawyers, and regulators, be conducted. This approach can provide a more thorough understanding of the obstacles in implementing investment limits and legal actions against foundations that violate the non-profit principle. In addition, comparative studies with other countries that have stricter policies towards non-profit foundations can also provide insight into the possibility of developing and improving foundation regulations in Indonesia.

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